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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GARY C. HINKLE and JUDITH A. HINKLE,

Defendants.

No.

A 05 - 111 . CV (RRB)

COMPLAINT FOR RECOVERY
OF RESPONSE COSTS AND FOR
ASSESSMENT OF CIVIL PENALTIES

(42 U.S.C. §§ 9607, 9609(c) and 9622(l))

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

COMPLAINT – River Terrace RV Park Site

NATURE OF ACTION

1. This is a civil action instituted pursuant to Sections 107, 109, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9607, 9609, and 9622, against Gary C. Hinkle and Judith A. Hinkle (the "Hinkles") for: (1) the recovery of response costs due under a CERCLA Administrative Order on Consent for Removal Action ("AOC") issued to the Hinkles by EPA pertaining to the River Terrace RV Park Site in Soldotna, Alaska; and (2) the assessment of penalties for the Hinkles' failure to comply with their payment obligations under that AOC.

PARTIES

2. Plaintiff is the United States of America. Authority to bring this action is vested in the Attorney General by 28 U.S.C. §§ 516 and 519.

3. Defendants are residents of Soldotna, Alaska.

JURISDICTION AND VENUE

4. This Court has exclusive original jurisdiction over this action pursuant to Section 113(b) of CERCLA, 42 U.S.C. §§ 9613(b), because this is a controversy arising under CERCLA. The Court also has original jurisdiction of this matter under 28 U.S.C. §§ 1331 and 1345 because this is a civil action commenced by the United States that arises under the laws of the United States and, in part, under 28 U.S.C. § 1355 because this is an action for the recovery or enforcement of a fine or penalty incurred under an act of Congress.

5. Venue lies in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b) because the release of hazardous substances at the River Terrace RV Park Site occurred in this district and because defendants reside or may be found in this district.

STATUTORY BACKGROUND

6. Under Section 104(a) of CERCLA, 42 U.S.C. § 9604(a)(1), the President is authorized to act, consistent with the National Contingency Plan, to arrange for the removal of hazardous substances, pollutants and contaminants released into the environment or to take any other response

measure he deems necessary to protect the public health or welfare or the environment. Removal actions authorized under this Section may be taken by the owner or operator of the facility or any other responsible party when the President determines that such action will be done properly and promptly. Such actions must be in accordance with Section 122 of CERCLA pertaining to settlements.

7. Under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), the President, when he determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. Alternatively, he may, after notice to the affected State, take other action under Section 106, including issuing orders as may be necessary to protect public health and welfare and the environment.

8. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), imposes on the owners and operators of a facility and any persons who at the time of disposal of any hazardous substance owned or operated a facility at which such hazardous substances were disposed of joint and several liability for, *inter alia*, all costs of removal or remedial action incurred by the United States Government not inconsistent with the National Contingency Plan.

9. Under the provisions of Section 122 of CERCLA, dealing with settlements, the President is authorized, in his discretion, to enter into agreements with any person, including responsible parties, to perform any response action if he determines that such action will be done properly by that person, 42 U.S.C. § 9622(a).

10. The President's authority under Sections 104(a), 106(a) and 122 of CERCLA relevant to this action was delegated to the Administrator of EPA by Executive Order No. 12580, 52 Fed. Reg. 2923, 2925 (Jan. 29, 1987). That authority was re-delegated to the Regional Administrators

of EPA by EPA Delegation Order Nos. 14-14-A, 14-14-C and 14-14-D and, subsequently, to the EPA Region 10 Unit Managers by Regional Redelegation Orders R10 14-14-A and 14-14-B.

SITE BACKGROUND

11. The River Terrace RV Park Site (the "Site") is a property comprised of approximately ten acres on the banks of the Kenai River in a mixed commercial/residential area of Soldotna, Alaska. Defendants own the Site, which they acquired in 1974 and on which they operate a recreational vehicle park catering to the sport fishing and tourism industry.

12. A dry-cleaning business was operated on the Site from the 1960's to the 1980's. That business used the solvent perchloroethylene ("PCE"), a "hazardous substance" within the meaning of Section 101 of CERCLA, 42 U.S.C. § 9601.

13. In 1992, the Alaska Department of Environmental Conservation ("ADEC") discovered twenty-two (22) drums at the Site, several of which were labeled as containing PCE.

14. ADEC and Defendants conducted assessments of the soil and surface water at the Site and of river sediments adjacent to the Site. As of August of 1997, some 500 cubic yards of contaminated soil was excavated into three storage cells as a result of this assessment work and additional uncontained contaminated soil remained on Site. Concentrations of PCE up to 4,700 parts per million ("ppm") was found in soils on the Site; PCE contamination in the range of 77-510 parts per billion ("ppb") were found in river sediments adjacent to the Site; and PCE contamination at level up to 23 ppb were discovered in surface water at the Site.

15. EPA Region 10's Acting Unit Manager for Emergency Response/Site Cleanup, Unit 1 subsequently determined that the River Terrace RV Park Site was a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9); that the conditions described above constituted an actual or threatened "release" of a hazardous substance from the facility within the meaning of Sections 101(22) and 107(a) of CERCLA, 42 U.S.C. § 9601(22) and 9607(a); and that the Hinkles were "responsible parties" under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Further, he determined that: (a) contamination at the Site posed an ecological risk owing to the toxicity of PCE and its degradation products to aquatic life at low concentrations; (b) contamination at the Site may

pose a threat to human health through ingestion of groundwater and dermal contact with contaminated soil and sediments, owing to the suspected carcinogenicity of PCE in humans; and (c) that the actual or threatened release of hazardous substances from the River Terrace RV Park Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

16. In August of 1997, pursuant to his authority under Sections 104, 106(a), 107 and 122 of CERCLA, EPA Region 10's Acting Unit Manager for Emergency Response/Site Cleanup, Unit 1 issued an Administrative Order on Consent for Removal Action to Gary and Judith Hinkle for the performance by the Hinkles of a removal action to abate the hazards associated with the three areas of highest contaminant concentration at the River Terrace RV Park Site and the reimbursement by the Hinkles of response costs incurred by the United States in connection with that action. The Hinkles voluntarily entered into that Administrative Order on Consent on August 29, 1997.

17. The AOC required that Defendants perform a two-phase removal action. Phase I consisted of the excavation and stockpiling of all contaminated soils in excess of 11.5 ppm PCE into a fully encapsulating storage cell; installation and maintenance of appropriate engineering controls to prevent the migration of contaminants into the Kenai River; post-excavation sampling to confirm appropriate cleanup standards are attained; and backfilling of the excavation with clean soil or soil remediated to contamination levels below approved cleanup levels. Phase II required that the Hinkles subject contaminated soils to a thermal desorption treatment process or an alternate, EPA-approved remediation process; sample treated soils to confirm the attainment of appropriate cleanup level; and backfill treated soils onto the Site.

18. The AOC also required that Defendants reimburse EPA for all response costs, not inconsistent with the National Contingency Plan incurred by the United States, including direct and indirect costs that the United States incurred in reviewing or developing plans, reports, and other items under the AOC, verifying the work, or otherwise implementing, overseeing or enforcing the AOC.

FIRST CLAIM FOR RELIEF – RECOVERY OF RESPONSE COSTS

19. The allegations appearing in Paragraphs 1 through 18 above are re-alleged and incorporated herein by reference.

20. The Hinkles are liable under Section 107(a)(1) and (2) of CERCLA, 42 U.S.C. §9607(a)(1) and (2), as the present owners of a facility and as persons who at the time of the disposal of hazardous substances were “owners or operators” of a facility at which hazardous substances were disposed of, within the meaning of Section 101(20)(A) of CERCLA, 42 U.S.C. §9601(20)(A).

21. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the Hinkles are jointly and severally liable to the United States for all costs not inconsistent with the National Contingency Plan incurred and to be incurred by the United States in connection with the Site.

22. Pursuant to Paragraph 47 of the AOC, EPA was to submit, on a periodic basis, a bill to the Hinkles for response costs, and the Hinkles were to remit, within thirty days of receipt of the bill, a check for the amount of the bill to EPA’s Hazardous Substance Superfund.

23. On April 14, 1999, EPA sent the Hinkles an initial bill for \$150,185.49, which the Hinkles received on April 20, 1999. The Hinkles failed to pay that amount by May 20, 1999 and have failed or refused to pay that amount since that time.

24. The United States has incurred additional, unreimbursed Site-related response costs not inconsistent with the National Contingency Plan. Those costs now exceed \$206,730.22.

25. The Hinkles have failed to reimburse EPA for all response costs, not inconsistent with the National Contingency Plan, incurred by the United States in connection with the Site.

26. The United States is entitled to an order requiring Defendants to pay all unreimbursed Site-related response costs incurred by the United States not inconsistent with the National Contingency Plan, including the payment of interest at the rate specified in 42 U.S.C. § 9607(a).

SECOND CLAIM FOR RELIEF – CIVIL PENALTY FOR FAILURE TO COMPLY WITH AOC

27. The allegations appearing in Paragraphs 1 through 18 and 20 through 26 above are re-alleged and incorporated herein by reference.

28. Section 122(I) of CERCLA, 42 U.S.C. § 9622(I), provides that a potentially responsible

party who is a party to an administrative order entered pursuant to an agreement under Section 122 of CERCLA and who fails or refuses to comply with any term or condition of the order or agreement shall be subject to a civil penalty in accordance with Section 109 of CERCLA, 42 U.S.C. § 9609.

29. Section 109(c) of CERCLA, 42 U.S.C. § 9609(c), authorizes the President to bring an action in the United States district court for the appropriate district to assess and collect a penalty of not more than \$25,000 per day for each day during which a failure or refusal referred to in Section 122(i) of CERCLA continues. Executive Order 12580 delegates this authority to the Administrator of EPA, who is to be represented in any judicial proceedings by or through the Attorney General.

30. Defendants are potentially responsible parties who are parties to an administrative order entered pursuant to an agreement under Section 122 of CERCLA and have failed or refused to comply with the terms and conditions of that administrative order within the meaning of Section 122(i) of CERCLA and therefore are subject to a civil penalty in accordance with Section 109(c) of CERCLA, 42 U.S.C. § 9609(c). Pursuant to Section 109(c) of CERCLA, 42 U.S.C. § 9609(c), and the Federal Civil Penalties Inflation Adjustment Act, as amended, 28 U.S.C.A. § 2461 note, and 40 C.F.R. Part 19, Defendants are subject to a civil penalty of not more than \$27,500 per day for each day between January 30, 1997 and March 15, 2004 during which the failure or refusal occurred and a civil penalty of not more than \$32,500 for each day since March 15, 2004 in which said failure or refusal has continued.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States of America, prays that this Court:

A. Order Defendants to pay to the Hazardous Substance Liability Trust Fund all unreimbursed costs incurred by the United States in connection with the River Terrace RV Park Site not inconsistent with the National Contingency Plan, plus interest at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), through the date of payment;

B. Assess against Defendants a civil penalty of not more than \$27,500 for each day between January 31, 1997 and March 15, 2004 in which they or either of them failed or refused to comply with the Administrative Order on Consent and a civil penalty of not more than \$32,500 for each day

since March 15, 2004 in which they or either of them has continued to fail or refuse to comply with the Administrative Order on Consent.

B. Grant such other and further relief as may be just and proper and as the public interest and the equities of the case may require.

Respectfully submitted,

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